IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3662 of 2005
TO
FIRST APPEAL No.3673 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAQ OFFICER & ANR. - Appellants
Versus
SADHU BARDEVBHAI GAURIDAS & ORS. - Respondents

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Appearance:
MR SS SHAH, GP for Appellants in FA Nos.3662 to 3666 of 2005
and MR SS PATEL, AGP for Appellants in FA Nos.3667 to 3673 of 2005.
MR AJ PATEL for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/08/2006

ORAL JUDGMENT

(Per: HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

Admitted. Mr.A.J.Patel, learned counsel,

waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing the instant appeals under Section 94 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated 31st March 2004 passed by the learned Assistant Judge & Special Judge, (L.A.R.), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.146 of 2001 to 158 of 2001 by which the claimants have been awarded additional compensation at the rate of Rs.24/- per square metre over and above the compensation offered by the Special Land Acquisition Officer at the rate of Rs.1.39 ps. per square metre, for their acquired lands.

3. A proposal was forwarded by the Executive Engineer, Narmada Project, Division No.18/3, Mehsana, to the State Government, proposing the acquisition of

the lands of Village: Fatepura, Taluka: Detroj, District: Ahmedabad, for the purpose of construction of Narmada Canal. After having perused the said proposal, the State Government was satisfied that the lands of village Fatepura were likely to be required for the said public purpose. Therefore, a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued, which was published in the official gazette on 7th August 1995. After having been served with the notices under Section 4 of the Act, the landowners objected to the proposed acquisition. Their objections were considered and the Land Acquisition Officer thereafter submitted his report as required under Section 5A(2) of the Act, to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Fatepura as specified in notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, declaration under Section 6 of the Act was made, which was published in the official gazette on 29th June 1996. The interested persons were thereafter served with the notices for

determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.100/- per square metre. The Special Land Acquisition Officer, after having considered the material placed before him, offered compensation to the claimants at the rate of Rs.1.39 ps. per square metre by his award dated 27th February 1997. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was highly inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to the claimants. Accordingly, the References were made to the District Court, Ahmedabad (Rural), which were registered as mentioned hereinabove.

4. On behalf of the claimants, witness, Dilubha Shivubha, who is one of the claimants, was examined at Exhibit 17. He stated that the acquired lands are of even nature and fertility, having

adequate irrigation facilities and the farmers of village Fatepura are growing different crops and earning net agricultural income of Rs.35,000/- to Rs.40,000=00 per *vigha* annually. He also stated that village Fatepura was one of the developed villages of Detroj Taluka, having facilities like water, light, *pucca* road, primary school, etc.. This witness further stated that prior to the instant acquisition of the lands, the lands of village Fatepura were earlier acquired for the purpose of construction of Narmada Canal and consequent to that acquisition, the land reference cases, i.e. Land Acquisition Reference Nos.85 of 1999 to 91 of 1999, had been filed in which the Reference Court awarded compensation at the rate of Rs.28/- per square metre in those cases and, therefore, the claimants were entitled to get enhanced compensation on that basis.

5. The said witness was cross-examined by the learned District Government Pleader. He denied the suggestion that there was no irrigation facility on the acquired lands. However, he admitted that no receipts or any other document like bills, were

produced in support of purchase of seeds and sale of crops. He also denied that Katosan Road was passing 5 Kilometres away from village Fatepura. It was also admitted by him that no documents were produced to prove sale of agricultural produces.

The witness of the claimants was also cross-examined by the learned counsel for the acquiring body. Apart from admitting that no accounts were maintained, nothing substantial could be elicited from this witness over and above what has been referred to above.

6. On behalf of the acquiring body, witness Rameshbhai Ranchhodbhai Rajpal, was examined at Exhibit 31. This witness stated that he was serving as a Deputy Executive Engineer, Mehsana, and had seen the acquired lands of village Fatepura. He stated that village Fatepura was not having facilities like market, S.T. Depot, Society, Rolling Mills, as stated by the claimants and that it was situated 5 Kms. away from village Chuvala. However, he stated that the boundaries of both the villages were common.

7. On cross-examination of this witness by the learned counsel for the claimants, he admitted that at the time of acquisition, he was not discharging his duties as Deputy Executive Engineer and, therefore, he had no personal knowledge about the acquisition of lands of village Fatepura and that he was deposing only on the basis of the official record. He admitted that Narmada Canal was going towards village Suvala from Fatepura. However, he denied that the railway station was situated at a distance of only 0.5 Km. from the village.

8. Apart from the depositions of the witnesses, as referred to hereinabove, certain documentary evidence was produced by the claimants in support of their case. Reliance was placed on Exhibit 22, which is a judgment in Land Acquisition Case Nos.85 to 91 of 1999; Exhibit 23, which is a judgment in Land Acquisition Case Nos.92 to 100 of 1999; and Exhibit 16, which is a judgment in Land Acquisition Case Nos.131 to 134 of 1996. All these judgments are pertaining to the previous acquisition of the lands

from village Fatepura itself.

9. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous judgments and awards of the Reference Court pertaining to the lands of same village, which were produced at Exhibits 16, 22 & 23, were relevant pieces of evidence for the purpose of determining the correct market value of the lands acquired in the present case from the same village.

9.1 According to the Reference Court, Exhibit 16 indicated that the lands of village Fatepura were acquired pursuant to notification under Section 4(1) of the Act published in the official gazette on 5th September 1992 and vide judgment and award dated 12th November 2002 passed in Land Acquisition Reference Nos.131 to 134 of 1996, the Reference Court awarded a total compensation of Rs.20/- per square metre for the acquired lands. It was noticed that this judgment was not challenged either by the State Government or by the acquiring body. This fact was stated by the witness for the claimant on oath, in his deposition.

9.2 On perusal of Exhibit 22, the Reference Court held that it was an award of the Reference Court in Land Acquisition Reference Nos.85 to 91 of 1999 wherein notification under Section 4(1) of the Act was published on 3rd September 1996 and wherein, by judgment and award dated 14th November 2003, the District Court awarded a total compensation of Rs.28/- per square metre for the acquired lands of village Fatepura. It was noticed that this judgment of the Reference Court was confirmed by the High Court [Coram: B.J.Shethna & M.C.Patel, JJ.] in First Appeal Nos.1042 to 1048 of 2005 vide judgment dated 13th May 2006 and has, therefore, attained finality. A copy of the judgment of the High Court was produced by the learned counsel for the claimants for perusal of this Court and is taken on record.

9.3 The Reference Court noticed that the third document, upon which reliance was placed, is Exhibit 23, which is an award of the Reference Court in Land Acquisition Reference Nos.92 to 100 of 1999, wherein the date of publication of notification under Section

4(1) of the Act was 3rd September 1996. It was further noticed that the Reference Court awarded total compensation of Rs.28/- per square metre for the acquired lands and this judgment was carried in appeal by the State Government to the High Court and was confirmed vide its judgment dated 30th June 2006 rendered in First Appeal Nos.1983 of 2006 to 1991 of 2006. A copy of this judgment was produced by the learned counsel for the claimants during the course of hearing of the instant appeals for perusal of the Court and is taken on record.

10. It may be mentioned that in the instant appeals, the Reference Court, while relying upon the previous awards pertaining to lands of village Fatepura, as contained in Exhibits 16, 22 and 23, has awarded additional compensation at the rate of Rs.24/- per square metre to the claimants for their acquired lands, over and above compensation of Rs.1.39 ps. per square metre offered by the Land Acquisition Officer. It is relevant to notice that the date of publication of notification under Section 4(1) of the Act in the present appeals is 7th August

1995 whereas in Exhibits 16, 22 and 23, it is 5th September 1992, 3rd September 1996 and 3rd September 1996 respectively. Considering the difference in the dates of publications of the Section 4(1) notifications, the Reference Court has awarded Rs.24/- per square metre as additional compensation after giving benefit of reasonable rise in prices of the the lands by the impugned award, giving rise to the instant appeals.

11. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the respondents, at length and in great detail. This Court has also considered the documentary evidence produced by the parties for perusal of this Court.

12. Although the witness deposing on behalf of the claimants has stated at length regarding fertility of the acquired lands and sale of crops therefrom, the compensation has not been claimed on yield basis, but, as already noticed, reliance has been placed upon the previous awards of the Reference

Court at Exhibits 16, 22 and 23, which pertain to the previous acquisitions of lands for the same purpose from the very same village. From a perusal of the deposition of the claimant as well as of the previous awards at Exhibits 16, 22 and 23, it is evident that the lands, which were the subject matter of the previous acquisitions, apart from being situated in the same village as the lands, which are the subject matter of the present appeals, are also comparable to each other. The witness Dilubha Shivubha deposing on behalf of the claimants, has categorically stated that the lands, which were acquired previously, were similar in all respects to those which are subject matter of the present acquisition. This statement has not been shaken by the learned counsel for the opponents in his cross-examination, nor has any material been produced on record before the Court to demonstrate to the contrary. Under these circumstances and in the face of overwhelming and reliable evidence in the shape of the previous awards of the same village at Exhibits 16, 22 and 23, this Court is of the opinion that the Reference Court was justified in placing reliance on

the previous awards relating to the lands of this village for the purpose of determining the market value of the lands acquired in the present case.

13. It is a well settled proposition of law that the previous award of the Reference Court relating to the lands of the same village, which has attained finality, can safely be relied upon for the purpose of determining the market value of the lands acquired subsequently from that very village, especially when the lands are similar and comparable in all respects. Therefore, this Court finds that the Reference Court was justified in coming to the conclusion that as on 7th August 1995, the market value of the lands acquired in the present case was Rs.25.39ps. per square metre. During the course of arguments, the learned counsel for the parties have stated at the Bar that on the basis of Exhibit 22 wherein the date of notification under Section 4(1) of the Act was 3rd September 1996, the claimants in the present case, would be entitled to compensation at the rate of Rs.26/- per square metre whereas on the basis of Exhibit 23 wherein the date of

notification under Section 4(1) of the Act is also the same, the claimants would be entitled to compensation at the rate of Rs.25.20 ps. per square metre. The Reference Court has awarded total compensation at the rate of Rs.25.39 ps. per square metre in the present case, which has been correctly computed, and, therefore, this Court finds that no case is made out for interference in the instant appeals. The learned Assistant Government Pleader could not place on record any material so as to persuade this Court to take a different view than the one taken by the Reference Court. As no ground is made out by the appellants to interfere with the impugned judgment and award of the Reference Court, the appeals, which lack merits, deserve to be dismissed.

14. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw up the decree in terms of this Judgment at the earliest.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra